IN THE HIGH COURT OF JUDICATURE AT BOBBY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.2816 OF 2004

1. Laxman Irappa Hatti,
Age: 22 yrs, Occu: Service,
Residing at Bugadi Hatti,
Tal: Gadhinglaj, Dist:Kolhapur.
2. Suresh Irappa Hatti,
Age: 25 yrs, Occu: Agriculture,
Residing at Bugadi Hatti,
Tal: Gadhinglaj, Dist:Kolhapur. .. Applicants.

Vs

The State of Maharashtra,
through :Gadhinglaj Police Station
Dist:Kolhapur. .. Respondent.

Mr S.S.Patwardhan, for the applicants.
Mr V.B.Konde-Deshmukh, APP, for the respondent.

CORAM : D.B.BHOSALE,J.

DATE : 15th JULY, 2004

JUDGEMENT :

1. Heard Mr.Patwardhan, learned counsel for the applicants and Mr.Konde-Deshmukh, learned A.P.P. for the respondent.

2. The applicants have approached this Court for being released on bail in C.R.No.38 of 2003 registered at Gadhinglaj Police Station under sections 498-A,307, 302 read with 34 of Indian Penal Code. The occurrence in the present case took place on 13.4.2004.

3. The applicants, who are real brothers, are alleged to have subjected Sumitra, wife of applicant no.1, to cruelty and torture so as to coerce her parents to meet their unlawful demand of gold and other valuables and since their demand was not fulfilled, they allegedly committed her murder on 13.3.2004. Sumitra died of extensive burn injuries. She implicated the applicants in her dying declaration recorded after the occurrence. The applicants were arrested in connection with the said crime on 14.4.2004. They filed an application seeking bail on 5.5.2004 which came to be rejected by the Sessions Court on 13.5.2004. After completing the investigation, the chargesheet was filed on 4.6.2004. After filing of the chargesheet, the applicants filed another application for bail on 16.6.2004 which came to be rejected by the Sessions Court on 22.6.2004.

4. The second application filed by the applicants after filing of the chargesheet was opposed by the State mainly on the ground that filing of the chargesheet is

not a substantial change of circumstance and, therefore, the successive bail application deserves to be rejected in view of the law laid down by the Supreme Court in **State of Maharashtra Vs.Captain Buddhikota Subharao, AIR 1989 SC 2292**. The learned Addl.Sessions Judge rejected the said application holding that filing of the chargesheet/final report does not amount to a substantial change in fact-situation.

5. The principal grievance made by Mr Patwardhan, learned counsel for the applicant, is that the learned Sessions Judge failed to consider the merits of the case while rejecting his application for bail by order dated 22.6.2004, solely on the ground that filing of the chargesheet is not a substantial change of circumstance. According to Mr Patwardhan, the reliance placed on the judgment of **Captain Buddhikota Subharao** (supra) by the learned Sessions Judge was wrong since the Apex Court in the report was not considering the issue whether filing of the chargesheet amounts to change of circumstance. Mr.Patwardhan, further submitted that the learned Addl.Sessions Judge ought to have allowed the Advocate appearing for the applicant to make his submissions on merits on the basis of the documents supplied along with the chargesheet and decided the application afresh.

6. It is observed that Courts often take a view that filing of the chargesheet is not a substantial change of circumstance. Sometimes Courts refuse to enter into the merits of the case or allow the Advocate appearing for the accused to urge his contentions on the basis of the material supplied along with the chargesheet. Therefore, I would like to consider the question as to whether or not filing of the chargesheet is a substantive change necessitating Courts to decide the application seeking bail, filed after the chargesheet, on merits even if the earlier application/applications for bail were considered and rejected by the Court after perusing the material collected by the investigating agency.

7. In **Captain Buddhikota Subharao case,** the Apex Court was considering the issue whether the successive bail applications could be considered and decided without there being change in fact-situation. It was held in the said case that change in fact-situation means a substantial change which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. In that case, several applications for bail were filed and rejected and the gap between the last two orders was only of two days and it was nobody’s case that during those two days drastic

changes had taken place necessitating the release of the respondent on bail by the order which was impugned before the Supreme Court. The Supreme Court was not considering the question as to whether filing of the chargesheet is a change of circumstance entitling the accused to file application for bail afresh necessitating his release on bail on merits of the case. In the backdrop of that case, the Apex Court held that practice of filing successive bail applications should be discouraged without there being a change of circumstance. In my opinion, the reliance placed on this judgment by the trial Court was misplaced.

8. The law is now well settled that an order refusing an application for bail does not necessarily preclude another on a later occasion giving more material, further developments and different considerations. While the Court should set store by the circumstance that the bail application was once rejected and it cannot be said that the Court is barred from second consideration at a later stage. The Apex Court has taken such view in **Babu Singh and Ors Vs. State of U.P., (1978) 1 Supreme Court Cases 579**. In yet another judgment, the Apex Court in **Dilip Shankar Koli and ors Vs. State of Maharashtra, 1981 Cri.L.J.500** held that "there is no scientific formula in the matter of

reconsideration of application for bail nor are there any rigid consideration as such. There is no uniform test which alone can govern matters of bail. Indeed, a matter of bail is one where the position will always depend on the facts and circumstances of each case. Indeed, in the very same proceedings, circumstances can go on changing one way or the other and there can be no dispute that the bail once refused can be later on given, nor any dispute that bail even if given can be subsequently cancelled."

9. The powers conferred upon the Sessions Judge or the High Court under section 439 of Cr.P.C are wide enough to grant bail. There is no hard and fast rule and no inflexible principle governing the exercise of the discretion conferred by section 439 and that the only principle which was established was that the discretion should be exercised judiciously. The dominant criteria is whether there is any change of circumstance and the change should be substantial and not merely cosmetic. Under section 207 of Cr.P.C., an accused gets documents relied upon by the prosecution as of right. He is thus better equipped to address the Court and invite the Court to examine the evidence after filing of the chargesheet from his point of view and to point out lacunas, if any, in the investigation, which could be

fatal to the prosecution or sufficient enough to convince the Court that there exists reasonable grounds for, prima facie, believing that the applicant has not been guilty of an offence punishable with death or imprisonment for life. Until filing of the chargesheet one of the important fact that weigh on the mind of a Judge is the continuity of investigation and whether the investigation will be hampered if the accused is set at large. However, after filing of the chargesheet, this approach changes and the Court, apart from merits of the case, requires to consider whether the accused should be continued in custody even after the investigation is over. This change, in the approach of the Court after filing of the chargesheet towards evaluating the need of keeping the accused in custody, should be termed as substantial change. It is open for the Court to take similar view which was taken while rejecting earlier application for bail made before filing of the chargesheet. However, in my opinion, it is not open for the Court to hold that filing of the chargesheet is not a substantive change of circumstance and refuse to enter into merits of the case. The Court is obliged to consider merits of the case afresh by allowing the applicant or his advocate to argue an application for bail on the basis of documents supplied to the accused with the chargesheet as required under section 207 of

Cr.P.C.

10. In this view of the matter, in my opinion, the appropriate course would be to direct the learned Addl. Sessions Judge, Gadhinglaj, to decide the Bail Application bearing No.21/2004 afresh after affording an opportunity to the advocate for the applicant to argue his application for bail on the basis of the chargesheet and the documents supplied therewith. In the circumstances, the order dated 22.6.2004 by which Bail Application No.21/2004 filed after filing of the chargesheet renders ineffective.

. With the aforestated directions, the criminal application is disposed of.

. Parties to act on an ordinary copy of this order duly authenticated by the Personal Secretary of this Court.

(D.B.BHOSALE, J.)

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